

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

April 18, 1997

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance
(InterLATA) Service in Tennessee Pursuant to Section 271 of the
Telecommunications Act of 1996*

Docket No. 97-00309

REPORT AND RECOMMENDATION OF HEARING OFFICER
ON APRIL 3, 1997, STATUS CONFERENCE

On March 4, 1997, at a regularly scheduled Conference, the Directors of the Tennessee Regulatory Authority ("TRA") instituted a Formal Inquiry (the "Inquiry") for the purpose of determining the compliance of BellSouth Telecommunications, Inc. ("BellSouth") with criteria and procedures set forth in Section 271 of the Federal Telecommunications Act of 1996 (the "Act") for entry into the long distance (interLATA) markets in Tennessee.¹ At that same Conference, the Directors appointed Director Melvin Malone to preside as the Hearing Officer in a Status Conference, which was held on April 3, 1997. The purpose of the Status Conference was to define the specific factual, legal, and policy issues to be considered in this Inquiry, to determine the extent and means of obtaining additional information in aid of this Inquiry, and to establish the procedural framework for this Inquiry. The following appearances were entered:

BellSouth Telecommunications, Inc. - **Guy Hicks**, Esquire, 333 Commerce Street, Suite 2101, Nashville, TN 37201, and **Bennett Ross**, Esquire, 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375;

NextLink - **Dana Shaffer**, Esquire, 105 Malloy Street, #300, Nashville, TN 37201, and **Alaine Miller**, Esquire, 155 - 108th Ave., NE, Suite 810, Bellevue, WA 98004;

¹ The Order Instituting Formal Inquiry and Adopting Procedure was entered on March 21, 1997.

LDDS WorldCom and LCI International - **H. LaDon Baltimore**, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville, TN 37219-1823;

Time Warner Communications of the Mid South, L.P. - **Charles B. Welch**, Esquire, Farris, Mathews, Gilman, Branan & Hellen, PLC, 511 Union Street, Suite 2400, Nashville, TN 37219;

American Communications Systems, Inc. - **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

MCI Telecommunications Corporation - **Martha P. McMillin**, Esquire, 780 Johnson Ferry Road, Suite 700, Atlanta, GA 30342, and **Jon E. Hastings**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

AT&T Communications of the South Central States, Inc. - **Val Sanford**, Esquire, Gullett, Sanford & Robinson, 230 Fourth Avenue North, 3d Floor, Nashville, TN 37219-8888, and **James Lamoureux**, Esquire, 1200 Peachtree St., NE Atlanta, GA 30309;

Consumer Advocate Division, Office of the Attorney General - **Vincent Williams**, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243.

I. Parties to the Proceeding

In its March 21, 1997, Order Instituting Formal Inquiry and Adopting Procedure (the "Order"), the TRA resolved that the companies that filed comments in response to the Informal Section 271 Investigation and Report² conducted by the TRA Staff were deemed parties to this proceeding. Although LCI International Telecom Corporation ("LCI") filed a Petition for Leave to Intervene in this proceeding, the Hearing Officer advised counsel for LCI that the Petition was unnecessary because LCI filed comments in response to the

² On December 17, 1996, the Directors of the TRA requested the TRA Staff to conduct an informal investigation into BellSouth's entry into the long distance market in Tennessee. Comments received from the Consumer Advocates Division, BellSouth, and certificated facilities-based providers of local telephone service in Tennessee were included in the TRA Staff's Informal Investigation and Report, which was submitted to the Directors on February 18, 1997.

Informal Section 271 Investigation and Report and is thereby deemed a party to this proceeding. Therefore, it is the recommendation of the Hearing Officer that no action be taken on LCI's Petition for Leave to Intervene.³

At the Status Conference, counsel for BellSouth proposed that BellSouth Long Distance, Inc. ("BSLD") be added as a party to this proceeding. AT&T commented that BSLD should be represented during the proceedings to the extent BellSouth and BSLD are separate corporations. Counsel for MCI objected to BellSouth and BSLD filing separate testimony so as to prevent their having "two bites of the apple." Counsel for ACSI commented that BellSouth and BSLD are "one company" and as such should only have "a single spokesperson" in this proceeding.

The Hearing Officer was informed at the Status Conference that counsel for BSLD was present at the commencement of the Status Conference but had departed before this issue arose. Although counsel for BSLD was present at the Status Conference, he chose, for whatever reason, not to seek to intervene as a party. The Directors of the TRA have already established the method for intervening in this proceeding. If BSLD desires to attempt to become a party to this case, it may seek intervention like any other interested party.

II. Contents of the Record

There were no objections to including the TRA Staff's Informal Section 271 Investigation and Report in the record in this docket. It was also proposed that the

³ At this time, the parties to this proceeding are as follows: American Communications Systems, Inc. ("ACSI"), AT&T Communications of the South Central States, Inc. ("AT&T"), BellSouth Telecommunications, Inc. ("BellSouth"), the Consumer Advocate Division ("CAD"), Intermedia Communications ("Intermedia"), LDDS WorldCom ("LDDS"), LCI International Telecom Corporation ("LCI"), MCI Telecommunications Corporation ("MCI"), NextLink, Sprint Communications Company L. P. ("Sprint"), and Time Warner Communications of the Mid South., L.P. ("Time Warner").

testimony, evidence, orders and other documents filed in *In re: Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252*, Docket No. 96-01152; *In re: Petition of MCI Telecommunications Corporation for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Docket No. 96-01271; *In re: Petition by Sprint Communications Company, L.P. for Arbitration of Interconnection with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996*, Docket No. 96-01411 be made a part of the record in this docket. None of the parties objected to this proposal. The CAD, however, stated that since it was not a party to the aforementioned arbitration proceedings that it would need time to consider this proposal. The CAD requested time to reflect upon the proposal and perhaps to have the opportunity to review the records of the arbitration proceedings. The Hearing Officer reserved deciding the issue of whether the aforementioned dockets should be included in the record in this proceeding until after the CAD had an opportunity to file a written recommendation. The Hearing Officer requested that the CAD file such recommendation on or before April 10, 1997. To date, the CAD has not filed any such recommendation or an extension of time in which to do the same. It is the recommendation of the Hearing Officer that the TRA Staff's Informal Section 271 Investigation and Report, including the responses of ACSI and Intermedia, and the final orders from the aforementioned arbitration proceedings be made a part of the record in this docket. Counsel for AT&T is directed to consult with the parties to this proceeding to determine if a Confidentiality Agreement is necessary. If it is determined

that a Confidentiality Agreement is necessary, counsel for AT&T shall prepare the same for execution by the parties.

III. Discovery

The Hearing Officer recommends that the TRA Staff be permitted to serve discovery requests upon BellSouth and any other party to this proceeding any time after March 21, 1997, the date of the order initiating this proceeding. None of the parties objected to this recommendation. The parties will remain under a continuing, good faith obligation to supplement their responses to the Staff's discovery requests. The CAD requested at the Status Conference that it be permitted to serve discovery requests upon BellSouth. None of the parties objected to the request of the CAD. It is the recommendation of the Hearing Officer that the CAD be permitted to submit discovery requests upon BellSouth after the date upon which BellSouth files its 90-day notice with the TRA. All discovery requests and all responses thereto shall be timely served upon all parties to this proceeding.

IV. Threshold Legal Issues⁴

Section 271(c) of the Act establishes two (2) routes for Bell Operating Companies ("BOCs") to enter the in-region interLATA market -- the so-called "Track A" option under Section 271(c)(1)(A) and the "Track B" option under Section 271(c)(1)(B). While BellSouth has the prerogative to proceed under Track A, it conceded in response to the TRA Staff's Informal Section 271 Investigation and Report and again at the Status Conference that, in its opinion, it could not proceed under Track A. Some of the parties asserted that Track B is not available to BellSouth in Tennessee and other parties asserted that Track A is

⁴ The parties were given the opportunity at the Status Conference to raise any legal issues that they wished to brief in addition to the Track A, Track B, and permanent cost based rates issues. No other issues were raised by the parties.

not available to BellSouth in Tennessee. It was also argued that BellSouth cannot be granted in-region interLATA authority in Tennessee until the TRA establishes "permanent" cost based rates.

The Hearing Officer directed the parties to submit legal briefs on the aforementioned issues.⁵ Briefs must be filed with the TRA no later than noon on April 25, 1997. The parties may file reply briefs that do not exceed five (5) pages in length, double spaced.⁶ Reply briefs must be filed with the TRA no later than noon on May 2, 1997. Any reply briefs filed after noon on May 2, 1997, will be returned. The parties are directed to provide the TRA with copies of any authority cited in the briefs, particularly the relevant legislative history, to the extent such authorities are not readily available to the agency. It is the recommendation of the Hearing Officer that the Directors of the TRA hear oral arguments on the briefs at a time later determined.

V. Advance Notice of BellSouth's Section 271 Filing

In a letter to the TRA dated April 1, 1997, counsel for BellSouth agreed that BellSouth would provide the TRA at least ninety (90) days' advance notice before an application is filed with the Federal Communications Commission ("FCC") under Section 271 of the Act for authority to provide interLATA services in Tennessee. At the Status Conference, counsel for BellSouth confirmed BellSouth's agreement to provide the TRA with this advance notice. It is the recommendation of the Hearing Officer that contemporaneously with this advance notice, BellSouth shall furnish the TRA, and all parties of record in this proceeding, all evidence and information, of whatever nature, that it will rely

⁵ The Hearing Officer requested the parties to cite sufficient support when making conclusory or authoritative statements.

⁶ Briefs should be written in no less than a 12 point font size.

upon before the FCC in support of the Section 271 application.⁷ BellSouth agreed to act in good faith in providing the aforementioned documentation to the TRA and in updating any material changes, revisions or additions to said documentation.⁸

VI. Filing of FCC Application with the TRA

The Hearing Officer recommends that no later than thirty-five (35) days after BellSouth provides the TRA the requisite advance notice of the intent to file with the FCC, BellSouth shall file with the TRA a copy of the Section 271 application to be filed with the FCC.⁹ In addition, the Hearing Officer recommends that this supporting documentation shall be filed with the TRA in the same format as it will be filed with the FCC. After filing said document(s), BellSouth shall remain under a good faith continuing obligation to update its Section 271 application with respect to any changes, revisions, or additions.

VII. Schedule of the Proceedings

Subsequent to BellSouth filing its 90-day notice with the TRA, the following schedule is recommended by the Hearing Officer:

⁷ After some prodding from the Hearing Officer, BellSouth agreed to this recommendation.

⁸ According to BellSouth, it contemplates filing its 271 application under Track B. Nonetheless, BellSouth acknowledges that a change in circumstances could result in BellSouth filing its 271 application under Track A. BellSouth agreed to provide the TRA and the parties immediate notice if it changes Tracks at anytime after the initial 90-day notice. It is the recommendation of the Hearing Officer that should BellSouth notify the TRA in its initial 90-day notice that it is filing under one Track, and later notifies the TRA that it has decided to proceed instead under the opposite Track, the 90-day period will start anew at the time of the second notification. This recommendation is premised, among other things, upon a recognition that such a scenario is tantamount to a new filing.

⁹ At the time that BellSouth files its Section 271 application pursuant to Section VI of this Report and Recommendation, it is recognized that the possibility exists that some documentation included in the application may have been filed previously with the 90-day notice. To the extent that such documentation previously filed has changed in any manner, such as form, content, substance, etc., said documentation must be refiled in its entirety, with the changes and modifications redlined. If, however, the changes and modifications constitute new arguments that make the previously filed documentation irrelevant or there is a substantial difference in volume, redlining is not required.

1. Legal briefs, as requested in Section IV herein, shall be filed by the parties on or before noon April 25, 1997. Reply briefs, not exceeding five (5) pages in length, double spaced, may be filed on or before noon May 2, 1997.

2. BellSouth shall provide the TRA with 90 days advance notice before filing its Section 271 application with the FCC.

3. No later than thirty-five (35) days after BellSouth provides the TRA its 90-day notice, BellSouth shall file with the TRA a copy of the Section 271 application to be filed with the FCC.

4. BellSouth has informed the TRA and the parties that it intends on filing a draft of its statement of generally available terms at the time that it files its 90-day notice with the TRA.

5. Thirty-five (35) days after BellSouth files its 90-day notice, BellSouth has agreed to file its final statement of generally available terms with the TRA.¹⁰

6. Forty-five (45) days after BellSouth files its 90-day notice, all parties other than BellSouth shall file their direct and rebuttal pre-filed testimony.¹¹

7. Ten (10) days after the filing of direct and rebuttal pre-filed testimony by parties other than BellSouth, BellSouth shall file rebuttal testimony. It is the recommendation of the Hearing Officer that surrebuttal testimony not be permitted.

¹⁰ BellSouth represented at the Status Conference that its final statement of generally available terms will be the same as the draft of its statement of generally available terms. BellSouth shall redline any changes from the draft to the final.

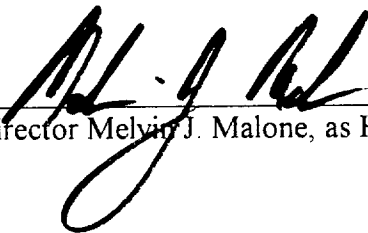
¹¹ Recognizing that some witnesses may testify on a host of issues within a single, multi-page document, the parties, including BellSouth, are directed, when filing any testimony, in whatever form, to identify the specific pages on which each of the issues a witness addresses are addressed.

8. A Pre-Hearing Conference will be held within five (5) days after the filing of rebuttal testimony by BellSouth (or as soon thereafter as is practicable).

9. All filings made pursuant to this Report and Recommendation shall be made on or before noon on the date due.

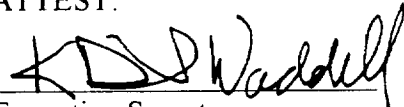
10. The TRA reserves the right to modify this schedule at any time.¹²

Respectfully submitted,



Director Melvin J. Malone, as Hearing Officer

ATTEST:



Executive Secretary

¹² Many of the dates triggered by the filing of the 90-day notice may fall on weekends. The TRA will issue a calendar in this docket after BellSouth files its 90-day notice.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April ~~18~~, 1997, the foregoing document was served upon the parties by United States Mail with sufficient postage thereon to carry the same to their destinations, properly addressed as follows:

Guy Hicks, Esquire, BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, TN 37201;

Bennett Ross, Esquire, BellSouth Telecommunications, Inc., 675 West Peachtree Street, Suite 4300, Atlanta, GA 30375;

Dana Shaffer, Esquire, NextLink, 105 Malloy Street, #300, Nashville, TN 37201;

Alaine Miller, Esquire, NextLink, 155 - 108th Ave., NE, Suite 810, Bellevue, WA 98004;

H. LaDon Baltimore, Esquire, Farrar & Bates, 211 Seventh Avenue North, Suite 320, Nashville, TN 37219-1823;

Charles B. Welch, Esquire, Farris, Mathews, Gilman, Branan & Hellen, PLC, 511 Union Street, Suite 2400, Nashville, TN 37219;

Henry Walker, Esquire, Boulton, Cummings, Connors & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

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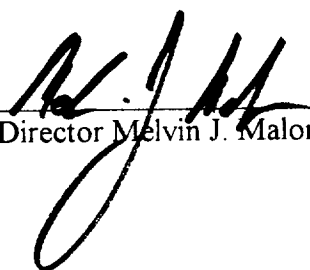
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James Lamoureux, Esquire, AT&T Communications of the South Central States, Inc., 1200 Peachtree St., NE Atlanta, GA 30309;

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Director Melvin J. Malone